

REPLY OF MR. WEBSTER.

WASHINGTON, *May 15, 1850.*

GENTLEMEN: I have the honor to acknowledge the receipt of your letter, of the 5th of April, approving the sentiments of my speech, delivered in the Senate on the 7th of March last. As considerable differences of opinion prevail, in Massachusetts, on the subject of that speech, it is grateful to receive, in a letter so respectably and numerously signed, opinions so decidedly concurring with my own.

Circumstances have occurred, within the last twenty years, to create a new degree of feeling, at the North, on the subject of slavery; and from being considered, as it was at the adoption of the Constitution, mainly as a political question, it has come to be regarded, with unusual warmth, as a question of religion and humanity. It is obvious enough, that the Government of the United States has no control over slavery, as it exists in the several States. Its proper jurisdiction, in this respect, is confined to its own Territories, except so far as it is its duty to see that that part of the Constitution, which respects the surrender of fugitive slaves, be carried fairly and honestly into execution.

The Constitution of the United States, in the 2d section of the 4th article, declares:

"A person charged in any State with treason, felony, or other crime, who shall flee from justice, and be found in another State, shall, on demand of the executive authority of the State from which he fled, be delivered up, to be removed to the State having jurisdiction of the crime.

"No person held to service or labor in one State, under the laws thereof, escaping into another, shall, in consequence of any law or regulation therein, be discharged from such service or labor, but shall be delivered up on claim of the party to whom such service or labor may be due."

This provision of the Constitution seems to have met with little exception or opposition, or none at all, so far as I know, in Massachusetts. Every body seems to have regarded it as necessary and proper. The members of the convention of that State for adopting the Constitution were particularly jealous of every article

and section, which might in any degree entrench on personal liberty. Every page of their debates evinces this spirit. And yet I do not remember, that any one of them found the least fault with this provision. The opponents and deriders of the Constitution, of this day, have sharper eyes in discerning dangers to liberty, than General Thompson, Holder Slocum, and Major Nason had, in 1788; to say nothing of John Hancock, Samuel Adams, and others, and among them the very eminent men who were delegates in that Convention from Newburyport: Rufus King, Benjamin Greenleaf, Theophilus Parsons, and Jonathan Tilcomb.

*friends
of the
constitution*

The latter clause, quoted above, it may be worth while to remark, was borrowed, in substance, from the celebrated Ordinance of 1787, which was drawn up by that great man of your own county, and a contemporary of your fathers, Nathan Dane.

Mr. Dane had very venerable New England authority for the insertion of this provision in the ordinance which he prepared.

In the year 1643 there was formed a confederation between the four New England colonies, Massachusetts Bay, Plymouth, Connecticut, and New Haven; and in the 8th article of that confederation it is stipulated as follows, viz:

“It is also agreed, that if any servant run away from his master into any other of these confederated jurisdictions, that, in such cases, upon the certificate of one magistrate in the jurisdiction out of which the said servant fled, or upon other due proof, the said servant shall be delivered, either to his master, or any other that pursues, and brings such certificate or proof.” And in the “Articles of Agreement,” entered into in 1650, between the New England Colonies and “the delegates of Peter Stuyvesant, Governor of New Netherland,” it was stipulated that “the same way and course” concerning fugitives should be observed between the English Colonies and New Netherland, as had been established in the “Articles of Confederation,” between the English Colonies themselves.

On the 12th of February, 1793, under the administration of Gen. Washington, Congress passed an act for carrying into effect

both these clauses of the Constitution. It is entitled, "*An act respecting fugitives from justice, and persons escaping from the service of their masters.*"

The first two sections of this law provide for the case of fugitives from justice; and they declare, that whenever the executive authority of any State, or Territory, shall demand any person as a fugitive from justice, of the executive authority of any State or Territory to which such person shall have fled, and shall produce the copy of an indictment, or an affidavit made before a magistrate, charging the person, so demanded, with having committed treason, felony, or other crime, certified as authentic by the governor or chief magistrate of the State or Territory from whence the person so charged fled, it shall be the duty of the executive authority of the State or Territory to which such person shall have fled, to cause him or her to be arrested or secured, and notice of the arrest to be given to the executive authority making such demand, or to the agent of such authority appointed to receive the fugitive, and to cause the fugitive to be delivered to such agent when he shall appear: but if no such agent shall appear within six months, the prisoner may be discharged; and all costs or expenses, incurred by arresting, securing, or transmitting the fugitive shall be paid by the State or Territory making the demand. And that any agent who shall receive such fugitive into his custody, shall be authorized to transport him to the State or Territory from which he fled. And any person, rescuing or setting such person at liberty, shall, on conviction, be fined not exceeding five hundred dollars, and be imprisoned not exceeding one year.

The two last sections of the act respect persons held to labor in any of the United States or Territories, escaping into any other State or Territory; and are in these words:

[SECT. 3.] *And be it further enacted*, That when a person held to labor in any of the United States, or in either of the territories on the northwest or south of the river Ohio, under the laws thereof, shall escape into any other of the said States or Territories, the person to whom such labor or service may be due, his agent or attorney, is hereby empowered to seize or arrest such fugitive from labor, and to take him or her before any judge of the circuit or district courts of

the United States, residing or being within the State, or before any magistrate of a county, city, or town corporate, wherein such seizure or arrest shall be made: and upon proof, to the satisfaction of such judge or magistrate, either by oral testimony or affidavit taken before and certified by a magistrate of any such State or Territory, that the person so seized or arrested doth, under the laws of the State or Territory from which he or she fled, owe service or labor to the person claiming him or her, it shall be the duty of such judge or magistrate to give a certificate thereof to such claimant, his agent or attorney, which shall be sufficient warrant for removing the said fugitive from labor to the State or Territory from which he or she fled.

[SECT. 4.] *And be it further enacted*, That any person who shall knowingly and willingly obstruct or hinder such claimant, his agent or attorney, in so seizing or arresting such fugitive from labor, or shall rescue such fugitive from such claimant, his agent or attorney, when so arrested, pursuant to the authority herein given or declared; or shall harbor or conceal such person, after notice that he or she was a fugitive from labor, as aforesaid, shall, for either of the said offences, forfeit and pay the sum of five hundred dollars. Which penalty may be recovered by and for the benefit of such claimant, by action of debt, in any court proper to try the same; saving, moreover, to the person claiming such labor or service, his right of action for, or on account of, the said injuries, or either of them. [*Approved February 12, 1793.*]

It will be observed, that in neither of the two cases, does the law provide for the trial of any question, whatever, by jury, in the State in which the arrest is made. The fugitive from justice is to be delivered, on the production of an indictment, or a regular affidavit, charging the party with having committed the crime; and the fugitive from service is to be removed to the State from which he fled, upon proof, before any authorized magistrate, in the State where he may be found, either by witnesses or affidavit, that the person claimed doth owe service to the party claiming him, under the laws of the State from which he fled. In both cases, the proceeding is to be preliminary and summary; in both cases, the party is to be removed to the State from which he fled, that his liabilities, and his rights, may all be there regularly tried and adjudged, by the tribunals of that State, according to its laws. In the case of an alleged fugitive from justice, charged with crime, it is not to be taken for granted, in the State to which he has fled, that he is guilty. Nor in that State is he to be tried, or punished. He is

only to be remitted for trial, to the place from which he came. In the case of the alleged fugitive from service, the courts of the State, in which he is arrested, are not to decide that, in fact, or in law, he does owe service to any body. He, too, is only to be remitted, for an inquiry into his rights, and their proper adjudication, to the State from which he fled; the tribunals of which understand its laws, and are in the constant habit of trying the question of slavery or no slavery, on the application of individuals, as an ordinary exercise of judicial authority. There is not a slave State in the Union, in which independent judicial tribunals are not always open, to receive and decide upon petitions, or applications for freedom; nor do I know, nor have I heard it alleged, that the decisions of these tribunals are not fair and upright. Such of them as I have seen evince, certainly, these qualities in the judges.

This act of Congress, of the 12th of February, 1793, appears to have been well considered, and to have passed with little opposition. There is no evidence, known to me, that any body at the time regarded any of its provisions as repugnant to religion, liberty, the Constitution, or humanity. The two Senators of Massachusetts, at that time, were that distinguished legislator and patriot of your own county, George Cabot; and that other citizen of Massachusetts, among the most eminent of his day for talent, purity of character, and every virtue, Caleb Strong. Mr. Cabot, indeed, was one of the committee for preparing the bill. It appears to have passed the Senate without a division. In the House of Representatives it was supported by Mr. Goodhue, Mr. Gerry, both then, I believe, of your county of Essex, (Mr. Goodhue, afterwards, a Senator of the United States, and Mr. Gerry, afterwards, Vice President of the United States,) Mr. Ames, Mr. Bourne, Mr. Leonard, and Mr. Sedgwick, all members from Massachusetts; and was passed by a majority of *forty-eight to seven*; of these *seven* one being from Virginia, one from Maryland, one from New York, and four from the New England States; and of these four, one, Mr. Thacher, from Massachusetts.

I am not aware that there exists any published account of the debates on the passage of this act. I have been able to find none. I have searched the original files, however; and I find among the papers several propositions for modifications and amendments, of various kinds; but none suggesting the propriety of any jury trial in the State where the party should be arrested.

For many years, little or no complaint was made against this law, nor was it supposed to be guilty of the offences and enormities which have since been charged upon it. It was passed for the purpose of complying with a direct and solemn injunction of the Constitution; it did no more than was believed to be necessary to accomplish that single purpose; and it did that, in a cautious, mild manner, to be everywhere conducted according to judicial proceedings.

I confess I see no more objection to the provisions of this law than was seen to them by Mr. Cabot and Mr. Strong, Mr. Goodhue and Mr. Gerry; and such provisions appear to me, as they appeared to them, to be absolutely necessary, if we mean to fulfil the duties positively and peremptorily enjoined upon us by the Constitution of the country. But since the agitation caused by Abolition societies and Abolition presses has, to such extent, excited the public mind, these provisions have been rendered obnoxious and odious; unwearied endeavors have been made, and but too successfully, to rouse the passions of the people against them; and under the cry of universal freedom, and under that other cry, that there is a rule for the government of public men and private men, which is of superior obligation to the Constitution of the country, several of the States have enacted laws to hinder, obstruct, and defeat the enactments in this act of Congress, to the utmost of their power. The Supreme Court of the United States has solemnly decided, that it is lawful for State officers and State magistrates to fulfil the duties enjoined upon them by the act of Congress of 1793, unless prohibited by State laws; and, thereupon, prohibitory State laws have been immediately passed, inflicting fine and imprisonment on all State officers and

magistrates, who shall presume to conform to these requisitions of the act of Congress. And these prohibitory and penal laws of the States have rendered it imperative on Congress to make further and other provisions for carrying into effect the substantial intention of the act of 1793. And this is the cause of the introduction into the Senate, of a bill on the subject, recently, by the Committee on the Judiciary. Notwithstanding all that may be said by shallow men, ignorant men, and factious men—men whose only hope of making, or of keeping, themselves conspicuous, is by incessant agitation and the most reckless efforts to alarm and misguide the people, I know of no persons, in or out of Congress, who wish any thing more to be done on the subject of fugitives from service, than what is essentially necessary, in order to meet the requirements of the Constitution, and accomplish the objects of the act of Congress of 1793. And whatever enactments I may deem essential to this purpose, I, for one, shall certainly support, as I feel bound to do, by my oath of office, and by every consideration of duty and propriety.

As I have already said, the act of Congress of 1793 made no provision for any trial by jury, in the State where the arrest of a fugitive is made. I have considered the subject with a conscientious desire to provide for such jury trial, if possible, in order to allay excitement and remove objections. There are many difficulties, however, attending any such provision; and a main one, and perhaps the only insuperable one, has been created by the States themselves, by making it a penal offence in their own officers to render any aid in apprehending or securing such fugitives, and absolutely refusing the use of their jails for keeping them in custody, till a jury could be called together, witnesses summoned, and a regular trial be had. It is not too much to say, that to these State laws is to be attributed the actual and practical denial of trial by jury in these cases. These ill considered State laws it is, which have absolutely refused the alleged fugitive, as the case now stands, any trial by jury, by refusing those aids and facilities, without which a jury trial is impossible.

But, at the same time, nothing is more false, than that such

jury trial is demanded in cases of this kind by the Constitution, either in its letter or in its spirit. The Constitution declares, that in all criminal prosecutions there shall be a trial by jury; the reclaiming of a fugitive slave is not a criminal prosecution.

The Constitution also declares, that in suits at common law the trial by jury shall be preserved; the reclaiming of a fugitive slave is not a suit at the common law; and there is no other clause or sentence in the Constitution having the least bearing on the subject.

I have seen a publication by Mr. Horace Mann, a member of Congress from Massachusetts, in which I find this sentence. Speaking of the bill before the Senate, he says: "This bill derides the trial by jury secured by the Constitution. A man may not lose his horse without a right to this trial, but he may his freedom. Mr. Webster speaks for the South and for slavery, not for the North and for freedom, when he abandons this right." This personal vituperation does not annoy me, but I lament to see a public man of Massachusetts, so crude and confused in his legal apprehensions, and so little acquainted with the Constitution of his country, as these opinions evince Mr. Mann to be. His citation of a supposed case, as in point, if it have any analogy to the matter, would prove, that if Mr. Mann's horse stray into his neighbor's field, *he cannot lead him back without a previous trial by jury to ascertain the right.* Truly, if what Mr. Mann says of the provisions of the Constitution, in this publication, be a test of his accuracy in the understanding of that instrument, he would do well not to seek to protect his peculiar notions under its sanction, but to appeal at once, as others do, to that higher authority which sits enthroned above the Constitution and above the law.

*Note. I may be permitted to add, in a note, an extract from a private letter from one of the most distinguished men in England, dated as late as the 29th of Jan'y. "Religion is an excellent thing in every matter except in Politics. There, it seems to make men mad; and I do not know of any People more mad, than the Anti-Slavery people on your side of the water, and on ours. Up to the present time, I have no doubt they have aggravated every evil they have endeavored to mitigate, or prevent. If you tell one of them what has been the result of his officiousness, he answers "*Liberavi animam meam.*" I may have done wrong, but I shall go to Heaven for it. So I believe that your abolitionists have made

This note should have been all at first—

the state of the Slave, and still more that of the free black, much worse than it would have been; and probably in many States, that of Virginia for instance, have retarded his enfranchisement. But they care little, if they save their own souls. On the other hand the Southerners seem as unreasonable—To require California to accept Slavery seems both wicked and unjust.”

In these sentences my friend means, undoubtedly, to ascribe the evils which he so truly states, not to true and genuine Religion, not to the Religion of the Gospel, but to that fantastical notion of Religion which sometimes possesses men's imaginations. The Religion of the New Testament, that Religion which is founded on the teachings of Jesus Christ, and his apostles, is as sure a guide to duty in politics, as in any other concern of life.

Gentlemen, I am extending these remarks, I fear, to quite too great a length; but there is still one characteristic of this “agitation” too remarkable to be omitted.

A member of Congress from Illinois, of talent and rapidly increasing distinction, (Mr. Bissell,) in a speech delivered in the House of Representatives on the 21st day of February, made these very true and pertinent remarks:

“I am not so unmindful of truth as to deny that, in respect to the subject now under consideration, some of our Southern friends have good cause to complain. But it must have been remarked by all of us, that the Representatives from those States which have really been aggrieved in this respect are not those who have threatened us with disunion. These threats have come from the Representatives of States, from which, I venture to say, on an average not one slave escapes in five years. Who ever heard of a slave escaping from Mississippi or Alabama? Where does he go to? Who helps him away? Certainly not the people of the North. Kentucky, Virginia, Maryland, and Missouri, the only States that are really sufferers by the escape of slaves, do not seem to have dreamed of dissolution as a remedy; while the Representatives from a few of the extreme southern States, whence slaves could no more escape than from the Island of Cuba, see ample cause and imperious necessity for dissolving the Union and establishing a “Southern confederacy,” in the alleged fact that their slaves are enticed away by the citizens of the North.”

Now, the counterpart of the “agitation” presents an equally singular and striking aspect, in the fact, that the greatest clamor and outcry have been raised against the cruelty and enormity of the reclamation of slaves, in quarters where no such reclamation has ever been made; or if ever made, the instances so exceedingly few and far between, as to have escaped general know-

ledge. New England, it is well known, is the chosen seat of the Abolition presses and the Abolition societies. Here, it is, principally, that the former cheer the morning, by full columns of lamentations over the fate of human beings, free by nature, and by a law above the Constitution; but sent back, nevertheless, chained and manacled, to slavery and to stripes. And the latter refresh themselves from daily toil, by orgies of the night, devoted to the same outpourings of philanthropy; mingling, all the while, their anathemas at what they call "man catching," with the most horrid and profane oburgations of the Christian Sabbath, and, indeed, of the whole of Divine Revelation. They sanctify their philanthropy by irreligion and profanity; they manifest their charity by contempt of God and his commandments.

It is well to inquire what foundation there is for all this rhapsody of opinion, and all this violence in conduct. What, and how many, are the instances of the seizure of fugitive slaves which these persons have seen, or which have happened in New England in their time? And what have been the circumstances of injustice, cruelty, and atrocity attending them? To ascertain the truth in this respect, I have made diligent inquiry of Members of Congress from the six New England States. On a subject so general, I cannot be sure, of course, that the information received is entirely accurate; and, therefore, I do not say that the statement which I am about to present may be relied on as altogether correct; but I suppose it cannot be materially erroneous. The result, then, of all I can learn is this: No seizure of an alleged fugitive slave has ever been made in Maine. No seizure of an alleged fugitive slave has ever been made in New Hampshire. No seizure of an alleged fugitive slave has ever been made in Vermont. No seizure of an alleged fugitive slave has been made in Rhode Island, within the last thirty years. No seizure of an alleged fugitive slave is known to have been made in Connecticut, except one, about twenty-five years ago; and in that case the negro was immediately discharged for want of proof of identity. Some instances of the seizure of alleged fugitive slaves are known to have occurred, in this gene-

ration, in Massachusetts; but, except one, their number and their history is uncertain; that one took place in Boston twelve or fifteen years ago; and in that case some charitably disposed persons offered the owner a sum of money which he regarded as less than half the value of the slave, but which he agreed to accept, and the negro was discharged. A few cases, I suppose, may have occurred in New Bedford, but they attracted little notice, nor, so far as I can learn, caused any complaint. Indeed I do not know that there ever was more than a single case, or two, arising in that place. Be it remembered, that I am speaking of reclamations of slaves, made by their masters under the law of Congress. I am not speaking of instances of violent abduction, and kidnapping, made by persons not professing to be reclaiming their own slaves.

If this be a true account, of all that has happened in New England, within the last thirty years, respecting the arrest of fugitive slaves, and I believe it substantially is so, what is there to justify the passionate appeals, the vehement and empty declamations, the wild and fantastic conduct, of both men and women, which have so long disturbed, and so much disgraced, the Commonwealth and the country? What is there, especially, that should induce public men to break loose from all just restraint, fall, themselves, into the merest vagaries, and fan, with what they call eloquence, the fires, ever ready to kindle, of popular prejudice and popular excitement? I suspect all this to be the effect of that wandering and vagrant philanthropy, which disturbs and annoys all that is present, in time or place, by heating the imagination on subjects distant, remote, and uncertain.

It is admitted, on all hands, that the necessity for any legal provision for the reclaiming of fugitive slaves is a misfortune and an evil; as it is admitted by nearly all, that slavery itself is a misfortune and an evil. And there are States in which the evil attending these reclamations is practically felt. But where the evil really exists, there is, comparatively, little complaint, and no excitement. Maryland and Pennsylvania, for example, lie, the one on the Slave side of the line, the other on the Free side. Slaves escape from

Maryland, flee into Pennsylvania, and are there arrested. These instances are not unfrequent, and usually create no disturbance, and excite no exasperated feeling. In one instance, indeed, a mob assembled to rescue the fugitive, violence ensued, and a life was lost. This of course created popular resentment, and for a considerable time agitated the neighborhood. But in general the people of Pennsylvania understand their neighbor's rights, and are willing that they should be secured and enjoyed. Massachusetts grows fervid on Pennsylvania wrongs; while Pennsylvania herself is not excited by any sense of such wrongs, and complains of no injustice. The abolitionists of Massachusetts, both the out-and-out and the *quasi*, rend the welkin with sympathies for Pennsylvania, while Pennsylvania would quite as willingly be left to her own care of herself. Massachusetts tears fall abundantly for Pennsylvania sufferings; but which sufferings, Pennsylvania herself knows little or nothing of. No people are more opposed to slavery than the people of Pennsylvania. We know, especially, that that great and respectable part of her population, the Friends, have borne their testimony against it, from the first. Yet they create no excitement; they seek not to overthrow or undermine the Constitution of their country. They know that firmness, steadiness of principle, a just moderation, and unconquerable perseverance are the virtues, the practice of which is most likely to correct whatever is wrong in the constitution of the social system. No doubt there are sometimes to be found Friends subject to the frailty of desiring to become conspicuous, or to the influence of a false sentimentality, or borne away into an atmosphere flickering between light and darkness, by the puffs of the transcendental philosophy. But that is not a malady of the great body. They remain of sound and disposing minds and memories. I am misled by authority which ought not to mislead, if it be not true, that that great body approves the sentiments to which I have given utterance on the floor of the Senate.

Between Kentucky and Ohio complaints have arisen, occasionally, on the subject of fugitive slaves; but by no means to the ex-

tent which has been represented by the Abolition societies. Slaveholders in Kentucky complain of the difficulties which they encounter in reclaiming fugitives; and the people of Ohio complain, not of the execution of the act of Congress, and reclamations under it, but of the conduct of slaveholders, in coming into the State, taking and carrying back their slaves by force, and without legal process. The State of Ohio has had the discretion not to prohibit her officers and magistrates from performing the duties enjoined on them by the act of Congress. Such duties they perform when occasion requires; yet as they may be prohibited by the legislature, and as the Supreme Court has decided that it is in the power of Congress to make complete provision, by law, for the whole subject, and to give the power of executing such law to officers of the United States; and as the prohibitory acts of some of the States make an appropriate and suitable law of the United States indispensable, such law, if passed, would of course be general, and would comprehend Ohio with other States.

The act of 1793 gives a right of action to the owner of a fugitive slave against any person who shall harbor or conceal him. Such actions have been brought in Ohio, and I have heard an eminent judicial authority say, that he has found no more obstruction to the course of judicial proceedings in these cases than in others. Ohio juries try them with as much impartiality and calmness as they try other causes.

Gentlemen, from what I know of the subject, and of the public men, and the people of those two States, I fully believe, that if left entirely to them a law might be passed, perfectly satisfactory to every body, except those whose business is agitation, and whose objects are any thing but the promotion of peace, harmony, patriotic good will, and the love of UNION among the people of the United States.

And now, gentlemen, does not every sober-minded and patriotic man see the necessity, and feel the duty, of rebuking that spirit of faction and disunion, that spirit of discord and of crimi-

nation and recrimination, that spirit that loves angry controversy, and loves it, most especially, when evils are imaginary and dangers unreal, which has been so actively employed in doing mischief, and which, it is to be lamented, has received countenance and encouragement in quarters, whence better things were looked for?

We are now near the close of the sixth month of the session of Congress. What important measure has been adopted for the advancement of the great interests of the country?

For one, I hardly dare expect any progress in useful legislation, until a spirit shall prevail, both in Congress and the country, which shall look more to things important and real, and less to things ideal and abstract. That there are serious difficulties in our present condition, growing out of the acquisition of new territories, is certainly true. These difficulties were foreseen and foretold. An honest and earnest effort was made to avoid and avert them. They are now upon us. But we CAN overcome them, and still remain a prosperous, happy, and UNITED people, if prudence and conciliation shall animate our public counsels, and a spirit of forbearance, moderation, and harmony spread over the land.

I am, gentlemen, with entire regard, your obliged fellow-citizen, and obedient servant,

DANIEL WEBSTER.

TO HON. EDWARD S. RAND,
HON. W. B. BANNISTER,
REV. DR. DANA,
S. W. MARSTON, Esq.,

And others, signers to the letter of April 8th.



